

1 THE CLERK: Criminal action 2018-140A. United States
2 vs. Daniel Villafane-Lozada. Plea. Counsel, please state
3 your name and the party you represent for the record.

4 MR. MURRAY: Good morning, Your Honor. Jeremy Murray
5 on behalf of the United States government.

6 MR. BAGLEY: Good morning again, Judge. Jeff Bagley
7 for Mr. Villafane-Lozada.

8 THE COURT: Sorry we're running a little late. All
9 right. Ready?

10 MR. MURRAY: Yes, Your Honor. We're here for
11 purposes of a plea. It's my understanding that the defendant
12 would like to plead guilty to Count 2 of the indictment
13 charging him with one count of Title 18, United States Code,
14 Sections 2252A(a)(5)(B) and 2252A(b)(2), possession of child
15 pornography involving a prepubescent minor.

16 THE COURT: That's your understanding, Mr. Bagley?

17 MR. BAGLEY: Yes, Judge.

18 THE COURT: Would you please administer the oath to
19 the defendant?

20 (The defendant was sworn 10:54 a.m.)

21 THE COURT: Sir, you're now under oath. And being
22 under oath during the course of these proceedings, I'll be
23 asking you a number of questions. You'll have to answer those
24 questions honestly and truthfully. If you were to give me any
25 false answer, that false answer may be used against you in a

1 further prosecution brought by the government on a charge of
2 perjury or making a false statement while under oath. Do you
3 understand that, sir?

4 THE DEFENDANT: Yes.

5 THE COURT: I can't hear you.

6 THE DEFENDANT: Yes.

7 THE COURT: It's also very important you understand
8 what your rights are. If at any time during the course of
9 these proceedings, there is something you don't understand,
10 you want to ask me a question, you want to consult with your
11 attorney, you want something more fully explained to you,
12 you're free to do so. You're encouraged to do so. It's not
13 important that we get this over with as quickly as possible.
14 What's important is that I am satisfied that you fully
15 understand what your rights are. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: It's my understanding that you are here
18 today to waive certain rights and to plead guilty to Count 2
19 of the indictment under the terms and conditions of the plea
20 agreement. Do you understand this charge, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: Mr. Bagley, you have gone over Count 2
23 with your client. Are you satisfied that he understands it?

24 MR. BAGLEY: Yes, Judge.

25 THE COURT: Any reason for me to go through any

1 further explanation?

2 MR. BAGLEY: No, Your Honor.

3 THE COURT: And you've reviewed with him the terms
4 and conditions of the plea agreement and he understands them?

5 MR. BAGLEY: I have.

6 THE COURT: And his rights under Rule 11, right to a
7 trial, et cetera?

8 MR. BAGLEY: Yes, Judge.

9 THE COURT: Now, sir, you have discussed this whole
10 matter with your lawyer. He explained to you what your legal
11 rights are and what your legal options are. You probably
12 didn't like to hear what he had to tell you, but he's not
13 there to make you feel good. He's there to be your counsel.

14 And apparently, based on those discussions, you're
15 here today to waive certain rights and to plead guilty to
16 Count 2 under the terms and conditions of the plea agreement.
17 Are you fully satisfied with the advice and counsel you
18 received from your lawyer in this matter?

19 THE DEFENDANT: Yes.

20 THE COURT: Any complaints?

21 THE DEFENDANT: No.

22 THE COURT: All right. Let's proceed to the plea
23 agreement.

24 MR. MURRAY: Yes, Your Honor. The defendant, Daniel
25 Villafane-Lozada and the United States Attorney for the

1 Western District of New York, hereinafter the government,
2 hereby enter into a plea agreement with the terms and
3 conditions as set out below.

4 Paragraph 1. The defendant agrees to plead guilty to
5 Count 2 of the indictment, charging a violation of Title 18,
6 United States Code, Sections 2252A(a)(5)(B) and 2252A(b)(2),
7 possession of child pornography involving a prepubescent
8 minor, for which the maximum possible sentence is a term of
9 imprisonment of 20 years, a fine of \$250,000, a mandatory \$100
10 special assessment and a term of supervised release of at
11 least five years and up to life. The defendant understands
12 that the penalties set forth in this paragraph are the maximum
13 penalties that can be imposed by the Court at sentencing.

14 THE COURT: Do you understand that, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: Did you explain to him the importance of
17 this paragraph?

18 MR. BAGLEY: Yes, Judge.

19 THE COURT: What is the importance, Mr. Murray, of
20 this paragraph?

21 MR. MURRAY: Yes, Judge. Paragraph 1 satisfies a
22 requirement of Rule 11 by notifying the defendant of the
23 maximum penalty. The Court also must consider but is not
24 bound by the Federal Sentencing Guidelines. The sentencing
25 guidelines went into effect on November 1st, 1987 and are

1 relevant to federal offenses committed after that date. The
2 purpose of the sentencing guidelines is to establish a
3 sentencing system in which Courts will impose similar
4 sentences for similar crimes upon defendants who are similar
5 in ways that, according to the guidelines, are relevant to
6 sentencing.

7 If the sentencing guidelines procedure is followed,
8 the Court would impose a sentence within a range on a
9 sentencing table in the sentencing guidelines manual. This
10 range would depend on the defendant's criminal conduct and the
11 defendant's criminal history. The law requires the Court to
12 consider imposing the sentence in accordance with the
13 sentencing guideline procedure. The law permits the Court,
14 however, to impose a reasonable sentence without adhering to
15 the sentencing guidelines. Sentencing guidelines are
16 advisory.

17 THE COURT: Do you understand that, sir, so far? Do
18 you understand everything he said?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay.

21 MR. MURRAY: Paragraph 2. The defendant understands
22 that unless the defendant is indigent, the Court must impose a
23 special assessment of \$5,000 for the offense of conviction
24 pursuant to Title 18, United States Code, Section 3014, in
25 addition to the assessment imposed under 18 U.S.C.

1 Section 3013.

2 Paragraph 3. The defendant acknowledges that
3 pursuant to Title 18, United States Code, Section 2259A, the
4 Court must order restitution for the full amount of the
5 victim's compensable losses up to \$50,000, as determined by
6 the Court. The defendant understands the defendant will not
7 be entitled to withdraw the pleas of guilty based upon any
8 restitution amount ordered by the Court.

9 Paragraph 4. The defendant understands that if it's
10 determined that the defendant has violated any of the terms or
11 conditions of supervised release, the defendant may be
12 required to serve in prison all or part of the term of
13 supervised release, up to two years, without credit for time
14 previously served on supervised release.

15 And if the defendant commits any criminal offense
16 under Chapter 109A, 110 or 117 or Sections 1201 or 1591 of
17 Title 18, United States Code, for which imprisonment for a
18 term longer than one year can be imposed, the defendant shall
19 be sentenced to a term of imprisonment of not less than five
20 years and up to life.

21 As a consequence, in the event the defendant is
22 sentenced to the maximum term of incarceration, a prison term
23 imposed for a violation of supervised release may result in
24 the defendant serving a sense of imprisonment longer than the
25 statutory maximum set forth in paragraph 1 of this agreement.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

2

5
6
7
8
9
10
11

12

13

14

15

16

17
18
19
20
21
22
23

23

24

25

1 defendant is or will be an employee or student, among other
2 information. The defendant further understands that the
3 requirement to keep the registration current includes
4 informing at least one jurisdiction in which the defendant
5 resides, is an employee or is a student not later than three
6 business days after any change of the defendant's name,
7 residence, employment or student status.

8 The defendant has been advised and understands that
9 failure to comply with these obligations subjects the
10 defendant to prosecution for failure to register under federal
11 law, Title 18, United States Code, Section 2250, which is
12 punishable by imprisonment, a fine or both.

13 Turning to paragraph 6. The defendant acknowledges
14 that a conviction in this action may result in the defendant's
15 civil commitment, pursuant to 18 U.S.C. 4248, as a sexually
16 dangerous person. The defendant understands that a
17 determination as to whether the defendant will be subject to
18 civil commitment will be made initially by the Attorney
19 General or the Director of the Bureau of Prisons at the
20 conclusion of the defendant's term of imprisonment and that
21 the Court will make the final determination in a separate
22 proceeding.

23 Paragraph 7. The defendant --

24 THE COURT: Do you understand everything so far?

25 THE DEFENDANT: Yes.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

MR. MURRAY: Paragraph 7. The defendant understands the nature of the offense set forth in paragraph 1 of this agreement and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime:

A. The defendant knowingly possessed material that contained an image of child pornography as defined in Title 18, United States Code, Section 2256A;

B. That such child pornography had been mailed, shipped or transported in or affecting interstate or foreign commerce by any means, including by computer, or is produced using materials that had been mailed, shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

C. The defendant knew that such material contained child pornography;

And D. At least one of the child pornography images depicted a prepubescent minor or a minor or under 12 years old.

Paragraph 8. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty, including relevant conduct.

THE COURT: Do you understand everything so far?

THE DEFENDANT: Yes.

1 THE COURT: Okay.

2 MR. MURRAY: A. On or about April 19th, 2018, the
3 defendant, Daniel Villafane-Lozada, in the Western District of
4 New York, knowingly possessed material containing images and
5 videos of child pornography as defined in Title 18,
6 United States Code, Section 2256A. The images and videos were
7 stored on a Toshiba microSD memory card, which was
8 manufactured outside of New York State. The images also had
9 been transmitted in interstate and foreign commerce via the
10 internet.

11 B. On or about April 19, 2018, HSI and the New York
12 State Police executed a search warrant at the defendant's
13 residence and interviewed the defendant. During that
14 interview, the defendant admitted that he viewed child
15 pornography and that child pornography would be found on his
16 Toshiba microSD memory card, which was seized and found to
17 contain 30 videos and 22 images of child pornography.

18 C. Some of the child pornography possessed by the
19 defendant depicted prepubescent minors or minors who had not
20 attained 12 years of age.

21 D. Some of the child pornography possessed by the
22 defendant contained sexual abuse or exploitation of an infant
23 or a toddler or depictions of violence.

24 E. At the time the defendant possessed the images
25 and videos, he knew that they depicted minors engaging in

1 sexually explicit conduct.

2 F. As part of the relevant conduct for the offense,
3 on or about May 3rd, 2018, the defendant admitted, during a
4 polygraph examination, to engaging in sexual contact with two
5 minor victims under the age of 18; hereinafter minor victim 1
6 and minor victim 2. The defendant admitted that between on or
7 about November 2016 and on or about January 2017 the defendant
8 engaged in anal and oral sexual contact with minor victim 1.
9 The defendant also admitted that between 2014 and 2015, the
10 defendant engaged in oral sexual contact with minor victim 2.

11 Paragraph --

12 THE COURT: I'm sorry. Where are you? What did you
13 just read, the last thing you just read?

14 MR. MURRAY: Your Honor, it was F, at the very top of
15 page 5.

16 THE COURT: Okay. How would you prove all of this?

17 MR. MURRAY: Yes, Your Honor. If this case proceeded
18 to a contested trial, the government would first call Homeland
19 Security Investigation Agent Justin Burnham. Agent Burnham
20 will testify that after receiving a cyber tip from the
21 National Center for Missing and Exploited Children, which
22 revealed that a particular email address linked to a
23 particular physical address was associated with uploading an
24 image of child pornography. Agent Burnham and the New York
25 State Police thereafter executed a search warrant at 138 Angle

1 Road, West Seneca, New York 14224.

2 Agent Burnham will testify that on or about April 19,
3 2018, he encountered the defendant while in the process of
4 executing this search warrant with the New York State Police,
5 all in the Western District of New York. At that time, during
6 the search warrant execution, the defendant admitted to Agent
7 Burnham that he possessed child pornography and that he had a
8 Toshiba microSD memory card that contained child pornography.

9 The defendant then led Agent Burnham to the location
10 where he kept the Toshiba microSD memory card and provided the
11 memory card to Agent Burnham. Agent Burnham will testify that
12 the Toshiba microSD memory card was manufactured outside of
13 New York State and the defendant admitted that he used the
14 internet to obtain the child pornography. Agent Burnham will
15 testify that the Toshiba microSD memory card contained
16 approximately 22 images and 30 videos depicting child
17 pornography and he will lay the foundation for those images
18 and videos at the time of trial.

19 In particular, Agent Burnham will testify that, based
20 on his training and experience, at least one of the images
21 depicts a minor victim under the age of 12 years of age
22 engaging in sexually explicit conduct. Additionally, based on
23 his training and experience, Agent Burnham will testify that
24 some of the child pornography possessed by the defendant
25 contained sexual abuse or exploitation of an infant or

11:08AM 1 toddler.

11:08AM 2 Additionally, if we proceeded to trial, the
11:08AM 3 government would call the two victims to testify regarding the
11:08AM 4 defendant engaging in sexual contact with their person.
11:08AM 5 Specifically, the government would call minor victim 1, who
11:08AM 6 will testify that the defendant met minor victim 1 on a social
11:08AM 7 media application, Grinder and thereafter communicated with
11:08AM 8 him via a TextNow application to arrange an in-person. Minor
11:08AM 9 victim 1, who was 15 years old at the time, thereafter engaged
11:08AM 10 in anal and oral sexual contact with the defendant in the
11:08AM 11 Western District of New York between on or about November 2016
11:08AM 12 to January of 2017 and that's what minor victim 1 will testify
11:08AM 13 to.

11:08AM 14 Additionally, the government will call minor victim
11:08AM 15 2, who would testify the defendant met minor victim 2 through
11:08AM 16 an advertisement on Craig's List -- I'm sorry, will testify
11:09AM 17 that the defendant met minor victim 2 through an advertisement
11:09AM 18 on Craig's List and that minor victim 2, who was 14 years old
11:09AM 19 at the time, engaged in oral sexual conduct with the defendant
11:09AM 20 in the Western District of New York between 2014 and 2015.

11:09AM 21 THE COURT: Do you understand all that, sir?

11:09AM 22 THE DEFENDANT: Yes.

11:09AM 23 MR. MURRAY: Paragraph 9. The defendant understands
11:09AM 24 that the Court must consider but is not bound by the
11:09AM 25 sentencing guidelines.

Paragraph 10. The government and the defendant agree that Guideline 2G2.2(a)(1) applies to the offense of conviction and provides for a base offense level of 18.

Paragraph 11. The government and the defendant agree that the following specific offense characteristics do apply:

A. The two-level increase, pursuant to Guideline 2G2.2(b)(2), material involved a prepubescent minor or a minor under the age of 12 years;

B. The four-level increase, pursuant to Guideline 2G2.2(b)(4), offense involved material that portrayed sexual abuse or exploitation of an infant or toddler;

C. The five-level increase, pursuant to Guideline Section 2G2.2(b)(5), the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor;

D. The two-level increase, pursuant to Guideline Section 2G2.2(b)(6), offense involved use of a computer;

And E. The five-level increase, pursuant to Guideline Section 2G2.2(b)(7)(D), offense involved 600 or more images.

Paragraph 12 --

THE COURT: Just one second. Do you understand all this so far, sir?

THE DEFENDANT: Yes.

1 THE COURT: Mr. Bagley, you've gone over these
2 guidelines and these numbers with him?

3 MR. BAGLEY: Yes, Judge.

4 THE COURT: And he understands them?

5 MR. BAGLEY: Yes.

6 THE COURT: Now, you saw this table with all these
7 numbers on it, right?

8 THE DEFENDANT: Yes.

9 THE COURT: This is important. You're going to end
10 up on this table. And where you end up, that's a range of
11 months that are being recommended to the Court as to what the
12 sentence should be. I'm not bound by it, but I'm going to
13 carefully consider it. You want to end up as far to the top
14 of this table as you can and as far away from the bottom.
15 Because as you get down, those numbers, they get pretty high.
16 Do you understand that, sir?

17 THE DEFENDANT: Yes.

18 THE COURT: So, based on the calculations you have so
19 far, we're at a sentencing level of eight -- well, wait a
20 minute. We're at 36, right?

21 MR. MURRAY: That's correct, Your Honor. Yes.

22 THE COURT: Yeah. So, we started off with 18. Then
23 we had all these additions. These are all factors that boost
24 the number up.

25 Now, the next factor is paragraph 13, which talks

1 about acceptance of responsibility. And what that provision
2 says, if you're guilty of the offense -- and if you're not
3 guilty, you have no business being here -- but if you are
4 guilty of the offense and you're willing to accept
5 responsibility for the offense, then you can get a reduction
6 of three levels.

7 And if you look at 36 at the high end versus 33 at
8 the low end, you can see there's quite a bit of difference
9 there. No guarantee you'll get the lower end, but it gives
10 you and your lawyer a chance to argue for a lower sentence.
11 If you went to trial and if you were convicted, in all
12 likelihood, you would not get this three-level reduction. Do
13 you understand that, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: The theory being, you save the government
16 the time and expense of a trial, you should get a lower
17 number. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay.

20 MR. MURRAY: Paragraph 12. Based on the foregoing,
21 it is the understanding of the government and the defendant
22 that the adjusted offense level for the offense of conviction
23 is 36.

24 Paragraph 13. At sentencing, the government agrees
25 not to oppose the recommendation --

1 THE COURT: I've already gone through that.

2 MR. MURRAY: I apologize, Your Honor.

3 Paragraph 14. It's the understanding of the
4 government and the defendant that the defendant's criminal
5 history category is I. The defendant understands that if the
6 defendant is sentenced for or convicted of any other charges
7 prior to sentencing in this action, the defendant's criminal
8 history category may increase. The defendant understands that
9 the defendant has no right to withdraw the plea of guilty
10 based on the Court's determination of the defendant's criminal
11 history category.

12 Paragraph 15. It's the understanding of the
13 government and the defendant that with a total offense level
14 of 33 and criminal history category of I, the defendant's
15 sentencing range would be a term of imprisonment of 135 to 168
16 months, a fine of \$35,000 to \$250,000 and a period of
17 supervised release of five years to life. Notwithstanding
18 this, the defendant understands that at sentencing, the
19 defendant is subject to the maximum penalties set forth in
20 paragraph 1 of this agreement.

21 Paragraph 16. The government and the defendant agree
22 to the correctness of the calculations of the sentencing
23 guidelines range set forth above. The government and the
24 defendant, however, reserve the right to recommend a sentence
25 outside the sentencing guidelines range. This paragraph

1 reserves the right to the government and the defendant to
2 bring to the attention of the Court all information deemed
3 relevant to a determination of the proper sentence in this
4 action.

5 Paragraph 17. The defendant understands that the
6 Court is not bound to accept any sentencing guidelines
7 calculations and the defendant will not be entitled to
8 withdraw the plea of guilty, based on the sentence imposed by
9 the Court.

10 Paragraph 18.

11 THE COURT: Any reason to read Statute of
12 Limitations?

13 MR. BAGLEY: No, Judge.

14 THE COURT: Government Rights and Reservations?

15 MR. BAGLEY: No, Judge.

16 THE COURT: Let's go to the next section.

17 MR. MURRAY: Paragraph 22. The defendant understands
18 that Title 18, United States Code, Section 3742 affords the
19 defendant a limited right to appeal the sentence imposed. The
20 defendant, however, knowingly waives the right to appeal and
21 collaterally attack any component of a sentence imposed by the
22 Court which falls within or is less than the sentencing range
23 for imprisonment, a fine and supervised release set forth in
24 section 3, paragraph 15 above, notwithstanding the manner in
25 which the Court determines the sentence. In the event of an

1 appeal of the defendant's sentence by the government, the
2 defendant reserves the right to argue the correctness of the
3 defendant's sentence.

4 Paragraph 23. The defendant understands that by
5 agreeing not to collaterally attack the sentence, the
6 defendant is waiving the right to challenge the sentence in
7 the event that in the future the defendant becomes aware of
8 previously unknown facts or a change in the law which the
9 defendant believes would justify a decrease in the defendant's
10 sentence.

11 Paragraph 24. The government waives its right to
12 appeal any component of a sentence imposed by the Court which
13 falls within or is greater than the sentencing range for
14 imprisonment, a fine and supervised release set forth in
15 section 3, paragraph 15 above, notwithstanding the manner in
16 which the Court determines the sentence. However, in the
17 event of an appeal from the defendant's sentence by the
18 defendant, the government reserves the right to argue the
19 correctness of the defendant's sentence.

20 THE COURT: Basically, this is your day in court. If
21 the Court accepts the plea, you will have waived your rights.
22 And if I sentence you, say, to a different higher number than
23 what's set forth in the plea agreement, you would have a right
24 to appeal that because you agreed to the numbers here. I'd
25 have to explain why I did it. I'm not suggesting I'm going

1 to, but if I did, you could appeal that on the basis that the
2 sentence I imposed is unreasonable. Do you understand that,
3 sir?

4 THE DEFENDANT: Yes.

5 THE COURT: Just summarize the computer forfeiture.

6 MR. MURRAY: Yes, Your Honor. The defendant agrees
7 to criminally forfeit to the United States all of the title
8 and interest in the following assets; which include one Focus
9 Mini computer tower bearing serial number 1712FD4914010093,
10 one LG smartphone bearing serial number 602KPED0225908, one
11 Toshiba hard drive bearing serial number 25NAT4BASZ69 and one
12 Seagate hard drive bearing serial number 9VM9EV35 and one
13 Toshiba micro 4g SD card.

14 Additionally, the defendant knowingly, intelligently
15 and voluntarily waives his right to a jury trial on the
16 forfeiture of these assets. And additionally, the defendant
17 also agrees to the entry of the orders of forfeiture for the
18 aforementioned assets and waives the requirements of Federal
19 Rules of Criminal Procedure 32.2 and 43(a) regarding Notice of
20 Forfeiture in the charging instrument, announcement of the
21 forfeiture at sentencing and incorporation of the forfeiture
22 in judgement.

23 The defendant freely, voluntarily, knowingly and
24 intentionally waives any right to appeal or collaterally
25 attack any manner in connection with the forfeiture of assets

1 as provided in this agreement.

2 Paragraph 31. This plea agreement represents the
3 total agreement between the defendant, Daniel Villafane-Lozada
4 and the government. There are no promises made by anyone,
5 other than those contained in this agreement. This agreement
6 supercedes any other prior agreements, written or oral,
7 entered into between the government and the defendant. And
8 Your Honor, it's signed today by Special Assistant United
9 States Attorney Jeremy Murray on behalf of the United States
10 Government for the Western District of New York.

11 And additionally, the last paragraph: I have read
12 this agreement, which consists of 12 pages. I have had a full
13 opportunity to discuss this agreement with my attorney,
14 Jeffrey Bagley, Assistant Federal Public Defender. I agree
15 that it represents the total agreement reached between me and
16 the government. No promises or representations have been made
17 to me, other than what is contained in this agreement. I
18 understand all of the consequences of my plea of guilty. I
19 fully agree with the contents of this agreement. I am signing
20 this agreement voluntarily and of my own free will.

21 And Your Honor, that is signed today by the
22 defendant, as well as Mr. Jeffrey Bagley, the defendant's
23 attorney and it's dated today, Your honor, November 15th,
24 2018.

25 THE COURT: Now, sir, we've gone over the agreement

1 in court. You indicated you understand it. You signed it,
2 indicating you understand it. Your lawyer says he's gone over
3 it with you and he's satisfied you understand it. Any
4 questions, sir?

5 THE DEFENDANT: No.

6 THE COURT: Are these all the terms and conditions of
7 the plea agreement which we just read here in court?

8 THE DEFENDANT: Yes.

9 THE COURT: No one has made any other promises to
10 you, have they?

11 THE DEFENDANT: No.

12 THE COURT: How old are you, sir?

13 THE DEFENDANT: Twenty-three.

14 THE COURT: And where were you born and raised?

15 THE DEFENDANT: Puerto Rico.

16 THE COURT: When did you come to Buffalo?

17 THE DEFENDANT: When I was around 11 years old.

18 THE COURT: And what's the extent of your education?
19 How much schooling have you had?

20 THE DEFENDANT: I obtained my high school diploma.

21 THE COURT: Okay. And what high school did you go
22 to?

23 THE DEFENDANT: Dunkirk Senior High School.

24 THE COURT: Okay. And are you married?

25 THE DEFENDANT: No.

11:20AM 1 THE COURT: Do you have any children?

11:20AM 2 THE DEFENDANT: No.

11:20AM 3 THE COURT: What kind of work have you done over the

11:20AM 4 years?

11:20AM 5 THE DEFENDANT: Factory work, as well as retail.

11:20AM 6 THE COURT: Okay. Are you seeing a doctor for any

11:20AM 7 reason right now?

11:20AM 8 THE DEFENDANT: No.

11:20AM 9 THE COURT: Psychiatrist?

11:20AM 10 THE DEFENDANT: Currently in the jail, I am.

11:20AM 11 THE COURT: Okay. How are you doing with that?

11:20AM 12 THE DEFENDANT: Pretty well.

11:20AM 13 THE COURT: Have you ever been hospitalized for

11:20AM 14 narcotic addiction?

11:20AM 15 THE DEFENDANT: No.

11:20AM 16 THE COURT: How are -- or today, are you right now

11:20AM 17 under the influence of any drug, medicine or alcohol?

11:20AM 18 THE DEFENDANT: No.

11:20AM 19 THE COURT: Mr. Bagley, your client appears to be

11:21AM 20 intelligent, alert, focused, clearly seems to understand

11:21AM 21 everything I'm saying; does not appear to be under the

11:21AM 22 influence of any drug, medicine or alcohol. Is that

11:21AM 23 consistent with your observations?

11:21AM 24 MR. BAGLEY: Yes, Judge, it is.

11:21AM 25 THE COURT: Now, has anyone forced you to plead

1 guilty?

2 THE DEFENDANT: No.

3 THE COURT: Anyone threatened you in any way?

4 THE DEFENDANT: No.

5 THE COURT: Your willingness to plead guilty, you
6 discussed it with your lawyer, he discussed it with the
7 government's lawyer. Based on those discussions, this plea
8 agreement was prepared and that's how this all came about, is
9 that true?

10 THE DEFENDANT: Yes.

11 THE COURT: Now, do you understand the offense which
12 you are pleading guilty to is a serious offense? And if it's
13 accepted by the Court, you'll be found guilty and there will
14 be no appeal, except as I said earlier, if I sentence higher
15 than what's set forth in this agreement. Do you understand
16 that?

17 THE DEFENDANT: Yes.

18 THE COURT: And being found guilty of this offense
19 may deprive you of certain rights. You may lose the right to
20 vote, right to hold public office, right to serve on a jury,
21 right to possess a firearm, certain civil labor positions like
22 an officer, the right to hold a firearm. Do you understand
23 all this, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand you have a right to

1 plead not guilty, which you have done up to the present time
2 and you have a right to persist in that plea of not guilty and
3 you have a right to a fair trial in this courtroom where a
4 jury of 12 people will decide whether you're guilty or not
5 guilty. First of all, I'd be the judge and to the best of my
6 ability, I would conduct a trial fairly and impartially. I
7 have no interest in this case, other than to make sure you and
8 the government get a fair trial.

9 In selecting that jury, we would have in the
10 courtroom somewhere around 50 to 75 people from our jury pool,
11 people who live in this district. They'd be in the courtroom.
12 You'd be in the courtroom. Your lawyer would be with you.
13 They would all be put under oath to answer all my questions
14 honestly and truthfully. If there were anyone in that group
15 that would not be fair and impartial, that person would be
16 removed.

17 And you'd have input on that through your lawyer.
18 And you could say, hey, Judge, that guy has made up his mind.
19 And if I agree with you -- and there's no reason why I
20 wouldn't agree with you if it makes sense -- that person would
21 be gone. Also, you could remove up to 10 people for any
22 reason you want, other than race or gender. You couldn't say
23 I don't want any women on my jury or I don't want a particular
24 race of people. You can't discriminate in that sense. Do you
25 understand that?

[illegible]

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5

THE COURT: You're doing this voluntarily, of your own free will? No one is forcing you to do this? You

1 understand all the possible consequences?

2 THE DEFENDANT: Yes.

3 THE COURT: Counsel, do you have any reason why I
4 should not accept the plea?

5 MR. MURRAY: No, Your Honor.

6 MR. BAGLEY: No, Judge.

7 THE COURT: You're both satisfied I complied with all
8 the requirements of Rule 11?

9 MR. MURRAY: Yes, Your Honor.

10 MR. BAGLEY: Yes.

11 THE COURT: How do you plead to Count 2; guilty or
12 not guilty, sir?

13 THE DEFENDANT: Guilty.

14 THE COURT: It is the finding of the Court, the
15 defendant is fully competent and capable of entering an
16 informed plea. The plea of guilty is a knowing and voluntary
17 plea, supported by an independent basis of fact containing
18 each essential element of the offense charged. His plea is
19 therefore accepted. He is now judged guilty of Count 2.

20 Sentencing will be scheduled for March 1st at 12:30.
21 A written presentence report will be prepared by the probation
22 office to assist the Court in imposing sentence. You'll be
23 afforded an opportunity to meet with the probation officer to
24 provide information in that report. Your attorney should be
25 present. You'll receive a copy of the report, as well as your

1 attorney. You'll be able to file any additional information
2 or any motions or objections that are consistent within the
3 terms and conditions of the plea agreement and both you and
4 your attorney will have an opportunity to address the Court at
5 the time of sentencing and say anything you wish to say in
6 mitigation of the sentence. The scheduling for filing all
7 papers will be as follows.

8 THE CLERK: The initial presentence report will be
9 due January 15th. The statement of the parties with respect
10 to sentencing factors and objections, if any and motions, if
11 any, will be due February 8th. Responses to any objections or
12 responses to any motions will be due February 15th. A
13 sentencing memorandum and/or character letters in support of
14 the defendant will be due February 15th. Any motions to
15 adjourn the sentencing date will be due no later than
16 February 19th. The final presentence report will be due
17 February 22nd and the government's response to any legal
18 arguments in defendant's sentencing memorandum will be due
19 February 22nd.

20 THE COURT: All right. Anything further?

21 MR. MURRAY: No, Your Honor.

22 MR. BAGLEY: Judge, what was the sentencing date
23 again? I'm sorry.

24 THE COURT: March 1st at 12:30. All right. Thank
25 you.

11:26AM

1

MR. MURRAY: Thank you, Your Honor.

11:26AM

2

MR. BAGLEY: Thank you.

11:26AM

3

(Proceedings ended at 11:26 a.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

* * * * *

I certify that the foregoing is a
correct transcription of the proceedings
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Court Reporter,